

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Nick Fisher,

Plaintiff,

v.

One Way Funding LLC,

Defendant.

No. CV-18-00309-PHX-DLR

ORDER

This matter recently has come before the Court. The parties are advised, pursuant to LRCiv 12.1(c), that motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) and motions for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) are discouraged if the defect(s) in the complaint can be cured by a permissible amendment. In an effort to avoid unnecessary or multiple motions to dismiss or for leave to amend,

IT IS ORDERED as follows:

1. Before the filing of any motion under Rule 12(b)(6) or 12(c), the parties must confer in good faith to determine whether the motion can be avoided. Defendant shall explain to Plaintiff the reasons why Defendant believes the complaint fails to state a claim for relief. The parties shall discuss whether any of the deficiencies identified by Defendant can be cured through an amended complaint. If the parties agree on this point, Plaintiff shall file an appropriate amended complaint in order to avoid the filing of an unnecessary motion to dismiss.

1 2. Notwithstanding Plaintiff's belief that the complaint is sufficient to state a
2 claim for relief, or Defendant's belief that the complaint is not curable, if Plaintiff
3 believes that an amendment can cure or address some or all of the purported deficiencies
4 identified by Defendant, Plaintiff is strongly encouraged to file an amended complaint
5 containing all further allegations Plaintiff could make before Defendant files a motion to
6 dismiss or for judgment on the pleadings. This would avoid the need for Plaintiff to seek
7 leave to amend should the Court determine that the motion to dismiss or for judgment on
8 the pleadings is well taken.

9 3. As an alternative to the procedure outlined in paragraph 2, if Defendant files a
10 motion under Rule 12(b)(6) or 12(c) notwithstanding Plaintiff's belief that further
11 amendment of the complaint can cure the alleged defect(s), Plaintiff must submit, no later
12 than the time Plaintiff files a response to the motion, a proposed amended complaint that
13 complies with LRCiv 15.1(a) and contains all further allegations Plaintiff could make. In
14 the event a motion to dismiss or for judgment on the pleadings is granted in any part, no
15 leave to amend the complaint will be granted beyond what is offered in the proposed
16 amended complaint.

17 4. Any motion under Rule 12(b)(6) or 12(c) must certify that the parties conferred
18 in good faith but were unable to agree that the complaint is curable by a permissible
19 amendment. Motions that do not contain the required certification may be stricken by the
20 Court.

21 5. The parties shall endeavor not to oppose motions to amend filed prior to the
22 Scheduling Conference or within the time set forth for amending pleadings and joining
23 parties in the Rule 16 Scheduling Order.

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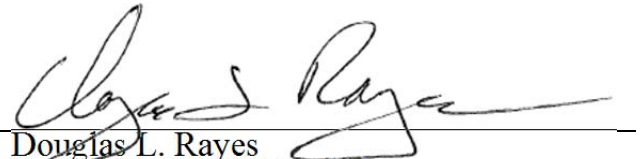
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1 6. Plaintiff shall serve a copy of this Order upon Defendant and file notice of
2 service with the Court.

3 Dated this 13th day of February, 2018.

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9 Douglas L. Rayes
10 United States District Judge
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